Supreme Court, U.S.
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No. 96-593

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

LIVING SPRINGS RETREAT, a Religious Corporation,

Petitioner,

vs.

(For Continuation of Caption See Reverse Side of Cover)

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK SUPREME COURT, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

BRIEF OF RESPONDENT MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DAVID W. SILVERMAN
Counsel of Record
GRANIK SILVERMAN CAMPBELL & HEKKER
254 South Main Street
New City, New York 10956-0370
(914) 634-8822

Counsel for Respondent Mahopac Central School District of the Towns of Carmel and Putnam Valley

10 pp

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY; RONALD FIORENTINO; PHILIP W. ORLANDO; and RUTH A. CLAUSE, individually and as Assessors of the Town of Putnam Valley; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; and PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Respondents.

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BRIEF OF RESPONDENT MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PRELIMINARY STATEMENT

The complaint of Living Springs Retreat, Petitioner herein, in the allegations set forth in paragraphs "13" and "14" (P. 23a-24a),[1] charges Respondent Mahopac Central School District of the Town of Carmel and Putnam Valley (the "School District") with violations of Article 16, Section 1 of the Constitution of the State of New York, and of the First and Fourteenth Amendments of the Constitution of the United States. Petitioner alleges that the School District "unlawfully, wilfully, intentionally, deliberately and discriminatorily denied the aforesaid application [to remove Petitioner's property from the tax roll] . . .," and further alleges that the School District "unlawfully, wilfully, intentionally, deliberately and discriminatorily denied to [Petitioner] the free exercise of religion, . . .".

The record in the court below is devoid of any testimony or evidence which would establish these allegations of the complaint against the School District.

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[1] Refers to pages in the Appendix to the Petition for Writ of Certiorari.

POINT I

THE SCHOOL DISTRICT IS NOT A PROPER PARTY.

Respondent School District annually levies taxes upon the various property owners within the School District. The tax roll upon which the taxes are based, setting forth the evaluation of all properties subject to tax, is, however, prepared by the assessors of the Towns wherein the School District is located. For purposes of this application for writ of certiorari, the tax roll involved is that prepared by the assessor of the Town of Putnam Valley.

Subdivision 2 of § 1302 of the New York Real Property Tax Law (RPTL) provides that town assessors shall prepare for each school district within such town a duplicate of that part of the assessment roll applying to such school district. RPTL § 1302 (McKinney 1989). This statute has been strictly interpreted by the New York courts. In District 3 IUE Housing Development v. John P. Buckley, as City Manager, 74 Misc.2d 1078, 347 N.Y.S.2d 125 (1973), the court held that:

> . . . the school district must base the taxes levied by it on the city's assessment rolls, it may not question the assessment so fixed by the city, nor the method of arriving at the assessed valuation, nor may it

> raise any valid objection to the granting of any exemption . . .

347 N.Y.S.2d at 128.

This position was followed in Xerox Corporation v. The Town of Webster, 131 Misc.2d 817, 502 N.Y.S.2d at 381.

The Putnam Valley Assessor's Office is responsible for generating the assessment roll. The School District, just as any other school district, then uses the assessment roll provided to it to levy taxes. The School District has no authority under the law to prepare its own assessment roll or to make determinations as to which, if any, property should be exempted from paying taxes. Based upon the case law cited above, it is clear that the School District is not a proper party to an action in which the central question is whether or not a property owner is entitled to an exemption from the tax assessment roll.

In its appeal, however, Petitioner is also seeking the return of all monies it has previously paid in school taxes to the School District. The School District believes that Petitioner is not entitled to a return of the taxes previously assessed for the simple reason that Petitioner is not entitled to an exemption from taxation. However, even were the Court to determine that Petitioner is entitled to the return of the money previously assessed in taxes,

the School District would still not be a necessary party to the case that led to such a determination. Under RPTL § 726, subsection 1(c):

> [a]ny final order in a proceeding under article 7 of this chapter, which orders or directs the correction or striking of an assessment appearing on that portion of a city, town or county assessment roll applicable to a school district, shall be binding on such school district. Any amount of taxes of such school district at any time collected upon such assessment in excess of the amount which would have been paid had such assessment been made as determined by such order, shall be refunded by the school authorities of such school district. . .

RPTL § 726.

The School District, therefore, is not a proper party to this action. If Petitioner is determined to be entitled to a return of the money it previously paid in school taxes, the School District will be bound by the court order; it does not have the power to contest such a court order; it will have no choice but to refund the taxes previously paid to Petitioner.

POINT II

THE EXEMPTION WAS PROPERLY DENIED AND THE APPLICATION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

By reason of its joinder as a party defendant, the School District was forced to take an active role in the defense of the claim of Living Springs Retreat for exemption.

In its opposition to the grant of a writ of certiorari, the School District urges upon this Court that the issue is whether the use of the property for which tax exemption has been denied was primarily in furtherance of a religious purpose. The issue is not whether Petitioner, Living Springs Retreat, fills the broad definition of a religious organization.

It is submitted that the findings made by the courts below clearly support and establish that the use of the property was not in furtherance of a religious purpose. It would serve no purpose to recapitulate at this point the decisions of the courts below based on those findings. They clearly and forcefully set forth the basis upon which the claim for exemption was denied.

CONCLUSION

It is respectfully submitted that Petitioner's application for writ of certiorari should be denied.

Dated: New City, New York
November 8, 1996

Respectfully submitted,

DAVID W. SILVERMAN
GRANIK SILVERMAN CAMPBELL
& HEKKER
254 South Main Street
P.O. Box 370
New City, NY 10956-0370
(914) 634-8822

Counsel for Respondent
Mahopac Central School
District of the Towns of
Carmel and Putnam Valley